



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Alnasco, Inc.

File: B-249863

Date: December 22, 1992

David C. Hawkins, Esq., Morrissey & Hawkins, for the protester.

Dennis Mullins, Esq., Barbara G. Gerwin, Esq., and Michael P. Morizio, Esq., General Services Administration, for the agency.

Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation for document storage center prohibited award for property in a flood plain or for property that abuts flood plain, unless there are no practicable alternatives, as required by an executive order, agency properly rejected an offer for a site that contained a flood plain and in fact could only be accessed by a private road that crossed through a flood plain area, as shown both on flood insurance rate map and on offeror's site plan, where other acceptable offers were submitted.

DECISION

Alnasco, Inc. protests the rejection of its offer by the General Services Administration (GSA) under solicitation for offers (SFO) No. 2PXE-2226 for a leasehold interest in warehousing and office space within the city limits of Pittsfield, Massachusetts, to be used for the storage of government records. GSA rejected Alnasco's offer because the agency determined that, contrary to a solicitation restriction, the site Alnasco was offering included land that was within a 100-year flood plain. Alnasco challenges this determination.

We deny the protest.

The SFO was issued on April 16, 1992, to acquire office and warehouse space by lease for a paper and document storage facility to be operated by the National Archives and Records Administration, for a term of 20 years. The SFO also included an option for an additional quantity of warehouse space, to be exercised during the first half of

the lease's term. The solicitation advised offerors that the site must be large enough to accommodate the initial requirement, the expansion area, a picnic area, parking lots and roads, all of which were described in detailed site requirements. The site requirements section also warned that "the site minimally shall not be in a 100-year flood zone or a 100-year flood zone shall not abut the property sideline," and that "the building must not impact wetlands." Offerors were required to submit with their offers a "certification as to location relative to Flood Plains and Wetlands" on a specified GSA form. Finally, the SFO warned that an award would not be made for property located within a base flood plain or wetland unless the government has determined the property to be the only practicable alternative.

The agency received competitive offers for a number of different sites, including the site offered by Alnasco, by the deadline of June 5. GSA's Source Selection Panel conducted an initial evaluation of the submitted offers and found several were acceptable. The panel determined that Alnasco's offer was for a site that included areas of a flood plain, and that the presence of the flood plain disqualified the property from further consideration. The agency advised Alnasco by letter that it was rejecting its offer on this basis. This protest followed.

As Alnasco recognizes, federal agencies are precluded by executive order from direct or indirect support of flood plain development wherever there is a practicable alternative. See Executive Order No. 11,988, 42 Fed. Reg. 26,951 (1977). The term "flood plain" refers to the low land and relatively flat areas of land adjoining inland and coastal waters and are basically those areas of land that flood waters will flow to first and recede from last. Cape May Greene, Inc. v. Warren, 698 F.2d 179, 182 (3rd Cir. 1983). Based on historical studies of prior flooding and statistical analyses of terrain and water flow, the Federal Emergency Management Agency (FEMA), under the National Flood Insurance Program, has prepared Flood Insurance Rate Maps that identify those areas of a community that, on the average, are likely to be flooded once every 100 years (i.e., have a 1 percent chance of flooding in any given year). See id; Wise Inv. Inc., B-247497.2, May 29, 1992, 92-1 CPD ¶ 480.

Here, the protester challenges GSA's determination that Alnasco's offered site so clearly included flood plain areas that it excluded the protester's initial offer from further consideration; according to Alnasco, if the agency had attempted to obtain further information through discussions, Alnasco would have demonstrated that there was no flood plain in the actual site plan it was offering. The

protester insists that the initial plan it submitted was a much larger parcel of land that did include areas of flood zone and wetlands, but that it never intended to offer the entire parcel of land as the site for the Archives project. Alnasco argues that its initial plan was "for information and feasibility purposes only"; the exact delineation of the site for the project was to be determined by further work, and Alnasco intended to submit detailed plans identifying the exact location of the site if it were awarded the contract.

Alnasco's offer included a preliminary plan showing a parcel of land of approximately 75 acres, and a narrative description stating that approximately 28 acres of the parcel was being offered for the project. The site plan showed proposed buildings, an existing building and a proposed expansion area that were all located at the end of an existing gravel-packed private roadway. The plan showed a curving swath of land, approximately 500 feet wide, that transected the gravel road (extending approximately one-third of the length of the road) that was labeled "Flood Plain Zone A." The map's "Special Notes" section defines this zone designation as an "area inundated by the 100-year flood; base flood elevations & flood hazard not determined." Other areas, immediately to the north and to the south of the road, as well as just south of the proposed parking lot, were marked "approximate limits of wetland boundary." The applicable Flood Insurance Rate Map for this area confirms the presence of the Zone A flood plain as shown on Alnasco's map. Both maps show that there is no way to access the proposed building site without passing through the flood plain and that the proposed property site, at a minimum, abuts a flood plain area. The flood plain certification that Alnasco submitted with its offer asserts only that no portion of the proposed building, as depicted on the site plan, is within a flood plain; it makes no mention of the road or surrounding areas.

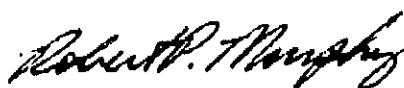
An offeror in a negotiated procurement must demonstrate within the four corners of its proposal that it is capable of meeting all the material terms of the solicitation. See ImageMatrix, Inc., B-243367, July 16, 1991, 91-2 CPD ¶ 61. Where a proposal is found to be technically unacceptable as submitted for failing to meet material requirements and would require major revisions or submission of effectively a new proposal to become acceptable, the agency is not required to include that proposal in competitive range. See Advanced Micrographics, Inc., B-245319.2, Jan. 8, 1992, 92-1 CPD ¶ 36. The agency has no duty to hold discussions with the offeror whose proposal is found outside the competitive range. Id.

Here, the SFO basically prohibited award to an offeror proposing property located within, or abutting, a base flood plain unless it was the only practicable alternative. Alnasco's initial proposal offered a parcel of land that clearly included areas of flood plain, and other offers were available that did not include flood plain areas. Alnasco's proposal thus could not be considered for award under the terms of the RFP. Accordingly, we find that GSA's rejection of Alnasco's nonconforming proposal was entirely proper. Western Div. Invs.; Columbia Inv. Group, B-213882; B-213882.2, Sept. 5, 1984, 84-2 CPD ¶ 258.

Even though its initial proposal was excluded from the competitive range, Alnasco submitted an additional site plan purporting to identify the boundaries of its site more specifically during the course of the protest. The revised site plan reduces the area of land that is being offered and excludes portions of the flood plain that are present in the larger parcel of land initially offered. However, access to the offered site is still dependent on a private road that passes through an area of the 100-year flood plain, and the property on which the building is proposed abuts the flood plain.

As stated above, the property could not be located in a flood plain or abut a flood plain and the site plan and FEMA map showed that Alnasco's site is located in, or abuts a flood plain. The fact that the building would not physically be located in the flood plain is not controlling. Western Div. Invs.; Columbia Inv. Group, supra. It is also clear that the access road is located in the flood plain area. While Alnasco argues that the actual elevation of the access road ranges from approximately 2 to 12 feet above the base flood elevation for the area, and that it therefore does not fall within the definition of flood plain, a part of the road is shown on the FEMA map as transecting the flood plain. In these circumstances, we find that it was entirely proper for GSA to rely on the FEMA map to determine that the access road was located in a flood zone area, and to exclude the proposal from further consideration on that basis. In addition, we find that it was reasonable for the agency to consider the private road to be an integral part of the offered site, since access to the site was dependent upon this road, and thus to conclude that the location of the road in a flood plain disqualified the entire site from further consideration.

The protest is denied.


for James F. Hinchman
General Counsel